**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 667 of 1989**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**JAYANTIBHAI G PATEL & 1 - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**
MR DD VYAS for Appellant(s) : 1,None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 2,
PUBLIC PROSECUTOR for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 22/11/2006**

**ORAL JUDGMENT**

1. Present is the appeal filed against the judgment and order passed by the learned Additional Sessions Judge, Valsad in Sessions

Case No.19 of 1988 dated 30.09.1989.

2. The learned Additional Sessions Judge, Valsad was pleased to convict both the accused the appellant herein for the offences punishable under Section 307 read with Section 34 and Section 120(B) of the Indian Penal Code. The learned Additional Sessions Judge was pleased to award rigorous imprisonment for five years with fine of Rs.500/- and in default to pay fine, rigorous imprisonment for further three months for the offence under Section 307 of Indian Penal Code. The learned Additional Sessions was also pleased to order that the period for which the accused had remained in jail as under trial prisoner, be given set off.

3. The facts of the case are that on 26.11.1987, around 07:30 p.m. in Village 'Kaanjan Ranchhod', Tal & Dist: Valsad, the accused no.1 called the complainant Kalaben Jagabhai Patel at Khadi to take money and also told her that he had some work with her. The accused no.2 also reached at the same place from where both the accused took

the complainant in Vadi of Chamarbhai Revlabhai, where for about half an hour, they were talking and thereafter with an intention to kill the complainant they forcibly made the complainant to drink an insecticide used in Chilly Crop named as 'Eka Laxys EC.25'. The case of the prosecution is that at the relevant time, the accused no.2 caught hold of the complainant and thus, committed offence of an attempt to murder the complainant.

4. The case of the complainant is that the complainant is residing at Village 'Kaanjan Ranchhod' of Taluka Valsad along with her mother and brothers. The father of the complainant had expired for past 6-7 years. She has studied upto 8th Standard. On 26.11.1987, the complainant had gone to Khadi for washing the clothes at about 12=00 noon. At that time, her aunt had also come to wash the clothes and after completing the work of washing clothes, she (the aunt) went away. Thereafter, around 02=00 noon, Satishbhai Nichhabhai and Ishwarbhai Khusalbhai residents of the same Faliya that of the complainant, had

come to wash their clothes. The complainant, after getting her clothes dried around 3 O'clock, started to go to her house. On the way, the accused no.1 Jayantibhai Gulabbhai met her near his field and asked the complainant to come at Khadi in the evening to collect money he (accused no.1) also told that he has some personal work with her. The complainant told him (accused no.1) that she will come in the evening and went to her home.

Thereafter around 7:00 p.m., the complainant went to 'Khadi' the accused no.1 was present there. While she was talking with the accused no.1, the accused no.2 Chimanbhai Jagabhai reached there. Thereafter, both the accused took the complainant to Vadi of Chamarbhai there they all were talking for about an hour. Thereafter, all of a sudden accused no.2 Chimanbhai Jagabhai caught hold of the complainant and accused no.1 Jayanti took out a bottle of poisonous medicine “Fleda” used as insecticide in chilly crop and forcibly poured the same in the mouth of the complainant. As the complainant was caught hold of by the accused no.2 Chimanbhai Jagabhai, she could not shout. On medicine being administered

to the complainant, she fainted and the accused ran away from the place. After sometime the complainant regained the consciousness and she shouted for help. On hearing shouts of the complainant, her brother Nabhubhai, Ishwarbhai and Ukadbhai came running there and they brought the complainant to the house of Ishwar. There she was administered Juice of Neem Tree, where by the complainant vomitted. The complainant was then admitted in the hospital at Valsad.

On the next day, Mamlatdar, Valsad, recorded the statement of the complainant. The real cause of the incident was the love affair between the complainant Kalaben and accused no.1 Jayantibhai as a result of which the complainant became pregnant. The accused Jayanatibhai advised the complainant and also gave some tablets to her to get the child aborted, but as it did not become possible, the complainant asked the accused Jayantibhai to marry her. Initially, he (accused Jayanti) agreed for the same, but then he turned around and did not marry the complainant. The brother of the complainant Nabhubhai then talked to Hirkabhai and meeting of 'Caste-Panch' was called. There it was agreed that Jayanti and

complainant be married. But, as the accused Jayanti was not willing to marry the complainant, he tried to kill the complainant by administering the poison forcibly.

5. On 27.11.1987, Police Constable Thavrabhai Parmabhai of Valsad Rural Police Station, while investigating the entry no.2/1987 of Police Station Diary dated 27.11.1987, it was learnt by him, that complainant was administered the poison. Therefore, the Investigating Officer i.e. PSI Shri R.P.Gohil, went to Valsad Municipal Hospital and recorded the complaint of the complainant and registered the same. The Investigating Officer then proceeded further with the investigation. He prepared the panchnama of the scene of offence. He recovered one towel,one earing and a 'Chandla' from the place of offence, and also one 'dabbi' (a metallic container of small size) in which there was liquid of green colour. The same was recovered by drawing a panchnama in the presence of panchas. The liquid of the 'dabbi' was taken in a bottle and after affixing slip containing

the signatures of panchas, another slip bearing signature of Investigating Officer, the bottle was sealed. Thereafter, from the place where the complainant vomitted, the earth was collected and from the vicinity sample earth was also taken. Thereafter, the statement of witnesses were recorded. On 28.11.1987, the statement of some more witnesses were taken and on the same day, i.e. 28.11.1987, panchnama of physical condition of the complainant 'Kalaben' was drawn. On 29.11.1987, the statement of remaining witnesses were taken.

6. The accused no.1 Jayantibhai had reported the incident at the Police Station, pursuant to which, after drawing an arrest panchnama, the accused was arrested. On 01.12.1987, the accused had shown the place of offence of which panchnama was drawn. The accused no.1 Jayantibhai having informed that he had purchased the medicine (insecticide) from 'Kher Gaam.' He was inquired about the same in reply to which he told that he had given the same to the co-accused. On 03.12.1987, the vendor of

medicine (insecticide), Maganbhai was interrogated and his statement was recorded. The co-accused was arrested on 08.12.1987 at about 12:15 pm. When he was inquired about the bill of the medicine given by the accused no.1 Jayanti, the co-accused informed that the said bill is with him at his residence. He volunteered to produce the same. By drawing a panchnama in the presence of panchas, the bill was recovered.

7. Thereafter, the muddamal insecticide, earth with vomit, sample earth and also the 'vomit' collected by the Doctor during the course of treatment, was sent to the FSL for analysis. A Yaadi was sent to Circle Inspector to prepare the map of scene of offence.

On receipt of the medical papers of the complainant, certificate from the FSL, the same were kept on record and after completing the investigation the Charge-sheet was filed in the Court of learned 2nd Joint Judicial Magistrate First Class, Valsad who by order dated 26.02.1988 committed the case to Court of

sessions as he did not have jurisdiction to try the offence.

8. Both the accused present before the Court, were read over Exh.1-Charge, and on inquiring, as to whether they have committed the offence, the accused denied the same, and, therefore, the trial was proceeded, the evidence was recorded. At the end of the trial, the statement of the accused was recorded and after hearing the arguments of the learned advocate for the accused, the learned Additional Sessions Judge, Valsad recorded the aforesaid conviction and awarded the sentence aforesaid.

9. The learned advocate for the appellant invited the attention of the Court to the deposition of P.W.5, Exh.26 the Complainant 'Kalaben Jagabhai', the deposition of P.W.8, Exh.32 Nabhubhai Jagabhai, Exh.33 deposition of P.W.9-Balubhai Maganbhai, a panch and deposition of P.W.2, Exh.16 Dr.Raam Ratan H.Ramavat. He referred to Exh.27,- the complaint, Exh.15 notification of marriage written before Caste

Panchayat on 22.11.1987 which bears the signatures and thumb impressions of the persons who were present on behalf of both the parties, Exh.44 the bill (cash memo), Exh.17 Medical certificate signed by the Chief Medical Officer of G.C.Sheth Surgical Department under Management of Valsad Municipality, Exh.18 opinion of Chief Medical Officer, G.C.Sheth, Surgical Department, Valsad, Exh.20 Yaadi from Police Station Officer, Valsad Rural addressed to the Medical Officer, Valsad.

10. The learned advocate appearing for the appellant submitted that the case of the prosecution is not probable and in support of his submission, he relied upon the deposition of Dr.Ramratan Ramavat (P.W.No.2 Exh.16). The learned advocate submitted that the Doctor has deposed that Kalaben-, the complainant, had taken the poison of Organo Phosphorus type. He has further deposed that if this poison is taken in large quantity, it may cause death of a person. The Doctor was shown the 'dabbi' muddamal article no.2 which bears the label “ Ek

Laxya EC.25” to which he has stated that if this poison is taken in large quantity it may cause death of a person. He has further deposed that if somebody tries to forcibly administer the poison to any person, and, if that person resists, then it is possible that the 'earring' and 'Chandla' may be dislodged. He has further deposed that after the poison is administered if immediately the person makes to vomit the major part of the poison will be out.

11. The learned advocate for the appellant invited attention of the Court to the Cross-examination of Doctor by Shri A.A. Sheikh,-the learned advocate for the accused no.2. The doctor has admitted after seeing muddamal article no.2 'dabbi' that, 'looking to the cut on the upper part of that 'dabbi', if the insecticide is forcibly administered from this 'dabbi', due to that cut on the upper part of the 'dabbi', injury may be caused on the mouth of the complainant'. The Doctor has also stated in the cross-examination that, 'if a woman is forcibly laid down on the ground in an uneven

place in a field and by sitting on her body, if an attempt is made to administer the insecticide forcibly, it is likely that, she may sustain injuries on her waist and elbow'. The Doctor further stated that, 'if a woman is hold forcibly then on that part of the body there will be marks'. The doctor has also stated that, 'he had examined complainant Kalaben and he did not find any such injury'.

At this juncture, the Court asked the Doctor that, 'such injuries will last for how long' to which the Doctor replied that, 'normally such injury will be for 10 to 15 minutes'.

12. The attempt on the part of the learned advocate for the appellant was to rule out the possibility of insecticide being forcibly administered to the complainant Kalaben. He has further submitted that possibly complainant-Kalaben tried to commit suicide to bring pressure on the accused so that he may marry her, as was agreed before the 'Caste-Panch' vide Exh.15. It is now pleaded that it was accused

nos.1 and 2 who administered the insecticide to the complainant forcibly.

13. The learned advocate for the appellant has submitted that in this case there is no eyewitness and the prosecution is not able to prove the case beyond doubt by examining any independent witness. He submitted that P.W.No.8 Nabhubhai is the brother of the complainant, and thus an interested witness.

14. The submission of the learned advocate for appellant is not worth accepting. Only because P.W.No.8 Nabhubhai is the brother of the complainant, his evidence does not become untrustworthy. In fact, the deposition of P.W.No.8 contains natural description of sequence of events. He has stated that he was trying to persuade accused no.1 to marry complainant-Kalaben. As he did not get success in his attempt even after pursuing the matter for 15 days as a last resort, the meeting of the 'caste panch' was called before the 'Caste Panch', the accused no.1 and his father agreed

to get married the accused no.1 with the complainant. The understanding between the parties was recorded in writing, which is described as a 'notification of marriage', it is at Exh.15. It reflects that on 22.11.1987 Sunday, the Panchayat had met. The writing 'notification of marriage' shows that in the presence of elderly persons of both the sides, the 'signatories' (the accused no.1 and the complainant) have married and the marriage was scheduled on 30.11.1987 in a temple at Abrama-Valsad; that there will be no change in this decision, that accused no.1 and the complainant had a relation for last about two years which resulted into love and they agreed to marry, to which the Panchayat granted its approval.

15. What is important is that, this 'notification of marriage' (Exh.15) is signed by five persons on each side. For the accused no.1, it is signed by Jayantibhai (accused himself), Chimanbhai Jagabhai (accused no.2), father of the accused Gulabbhai Hirkabhai has affixed his left thumb impression, one Dahyabhai Khusalbhai and

Dahyabhai Paatal also affixed their left thumb impression, whereas for the complainant, there is signature of Kalaben (complainant herself), Dahyabhai Ramjibhai and Jivanbhai Somabhai have signed whereas Chhimanbhai and Chandubhai Rambhai have affixed their left thumb impression.

16. Taking into consideration the totality of the case and the contents of notification of marriage at Exh.15, it is clear that accused no.1 though agreed to marry to Kalaben, before the Caste Panchayat, was not willing to execute the same, and, therefore, he indulged in such act and attempted to see that the complainant is removed from his life.

17. Exh.23 is the Dying Declaration recorded by Executive Magistrate, Valsad. The same is in a question answer form. In reply to the question no.10 i.e. as to why is she admitted in the hospital? - Give the narration of the incident with time, right from the beginning till you were admitted in the hospital. In response, the

complainant replied that, 'yesterday i.e. on 26.11.1987, in the evening at about 7:00 p.m. from place of her father village 'Kaanjan Ranchhod' in Vadi of Chamarbhai, the accused no.1 Jayantibhai, a resident of Gotiya Faliya of 'Kaanjan Ranchhod' had called her. She had gone there, where Jayantibhai and Chimanbhai (the accsused nos.1 and 2 respectively) were present. They made her drink poisonous medicine (insecticide) by holding her. After opening the cover of the 'dabbi'-bottle, Jayantibhai poured insecticide in her mouth while Chimanbhai was holding her. It was all of a sudden that she was forcibly administered the insecticide. The complainant has further stated that after she was forcibly administered the poisonous medicine (insecticide), she became unconscious and fell down in the Vadi. She has stated that since she was caught hold by accused no.2,-Chimanbhai, at the time of administering medicine, she could not shout. After regaining the consciousness she shouted and upon hearing her shouts her cousin brother Nabhubhai, Ishwarbhai and Ukadbhai came there and thereafter they brought her to the hospital.

18. In reply to question no.12, i.e. 'as to whether she is she caused injury/accident deliberately due to animosity, if so, disclose the names and if not then reply accordingly. In reply the complainant has stated that, 'she had illicit relationship with Jayanti for last about three years due to which she became pregnant before six months', she also stated that 'the accused having come to know about the same and as he did not want to marry her, he tried to kill her to avoid marriage.'

19. Learned advocate appearing for the appellant could not dislodge the case of the prosecution. The evidence of the witnesses is found to be quite natural and there is nothing on record which will go to show that the learned Judge has committed an error in appreciating the evidence and convicting the accused.

20. It will be necessary to refer to Exh.44, a bill-'Cash memo'. It bears no.2355 dated 25.111987, it is for two items. It is recovered

from accused no.2, under Panchnama Exh.34. One Balubhai Maganbhai is one of the Panch. He is examined as P.W.No.9, at Exh.33. He has supported the panchnama. This witness has deposed that accused no.2 Chimanbhai Jagabhai had pointed out the place of offence i.e. Vadi of Chamarbhai Revlabhai there he pointed out the place where the offence took place. Thereafter he voluntarily produced receipt of bottle,-'dabbi' of insecticide. The witness has further deposed that, Chimanbhai Jagabhai, the accused no.2 handed over the receipt to the Police taking out the same from a box at his house. There is detailed cross-examination of this witness by learned advocate Shri A.A.Sheikh for accused no.2. But then he is not able to dislodge the deposition of the witness.

21. Thus, it is clear that the accused no.1 had a definite reason to commit the offence, after a 'marriage notification' was executed in the presence of 'Caste Panchayat' (Exh.15) he did not have any option but to marry the complainant which he did not want and therefore he indulged

in an act which landed him in difficulty.

22. Having found no substance in the appeal , the same is dismissed.

(RAVI R TRIPATHI, J.)

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